IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SIXTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 11316 of 2004

Between:

M/s The South Indian Bank Ltd,

a banking company incorporated under the Indian Companies Act, 1956 with its Head Office at Thrissu and branch amongst other places at Parklane, Secunderabad,
rep. by its Brancfh Manager

Sri P. Srinivas S/o Sri P. Sambasiva Rao,

aged 42 years.

..... PETITIONER

AND

1 Labour Court-I, Chandra Vihar, Nampally, Hyderabad.
2 M/s Dessma Engineering Pvt. ltd,

a company incorporated under the Indian Companies Act,
1956 with its office situated at ASP Winston,

Survey No. 517 Kistapur Road, Medchal, Ranga Reddy District,
Rep. by its Chief Executive Director.
3 G. Shivaji, S/o Jaganatham Naidu,
R/o LIG-40, APHB Colony, Medchal, Ranga Reddy District.
4 S. Gangadhar, S/o Laxminarayana,
R/o H.No. 5-183, Ramalingeswaraswamy Temple Road,
Medchal, Ranga Reddy District.
5 P. Laxmana Murthy, S/o Iyanna,
R/o LIG 104, Medchal, Ranga Reddy District.
6 Ch. V.S.S. Naidu, S/o Krishnamaurthy,
R/o 3-12, Indiranagar Colony, Medchal, Ranga Reddy District.

7 D. Shekhar, S/o Pullaiah,
R/o 104, LIG Colony, Medchal, Ranga Reddy District.
8 Ch. Mahender, S/o Ramakistaiah,
R/o 13-45. Medchal, Ranga Reddy District.
9 K.V. Guneshwar Rao, S/o Sarveswar Rao,
R/o LIG 104, APHB Colony, Medchal, Ranga Reddy District.
10 M. Kumar, S/o Narasimha,
R/o 14/203, Kistapur , Medchal, Ranga Reddy District.
11 S., Krishnaiah, S/o Sanjaiah,
R/o 4-49, Debeerpur Buildings, Medchal, Ranga Reddy District.
12 P. Bharatamma, W/o Gangaiah,
R/o Gowdavally village, Medchal Mandal, Ranga Reddy
District.
13 N. Yadamma, W/o Devender,
R/o 9-109, Medchal Village, Ranga Reddy District.
14 M. Mahesh, s/o M. Ramulu,
R/o 4-47, Mysireddypally, Nuthankal, Medchal, Ranga Reddy
District.
15 G. Yadagiri, S/o Pochaiah,
R/o 4-96, APHB Colony, Dabirpur village, Medchal,
Ranga Reddy District.
16 S. Shafi Jani, S/o Shaik Mahmood,
R/o 9-68, Medchal, Ranga Reddy District.
17 M. Prakash Reddy, S/o Seetharamreddy,
R/o ESW 38, HB Colony, Medchal, Ranga Reddy District.
18 M. Rama Rao, S/o Kotaiah,
R/o EWS 38, HB Colony, Medchal, Ranga Reddy District.
19 N.V. Ramana Murthy, S/o Appalanaidu,
R/o 14-247, Kistapur, Medchal, Ranga Reddy District.
20 S. Srinivas Reddy, S/o Shiva Reddy,
R/o 2-64,Railapur village, Medchal, Ranga Reddy District.
21 P. Rambabu, S/o Venkat Ratnam,
R/o 5-183, Ramalingeswaraswamy Temple Road, Medchal,

Ranga Reddy District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to pass appropriate order or orders more particularly in the nature of Writ of Certiorari calling for the records from the Honourable Labour Court-I, Hyderabad in E.A.No. 52 of 2004 in E.P.No. 25 of 2003 in M.P.No. 79 of 2002 and declare the order of Honourable Labour Court ordering sale of property mortgaged with the petitioner bank as arbitrary, illegal and violative of fundamental rights guaranteed under Articles 14, 19 (1) (g) and 300(A) of Constitution of India and quash the order in E.A.No. 52 of 2004, dated 6-5-2004 in E.P.No. 25 of 2003 in M.P.No. 79 of 2002 on the file of Honourable Labour Court and set aside the order of sale of mortgaged properties namely (1) agricultural dry land admeasuring 2 acres 3 guntas in survey No. 517, situated at Medchal, Ranga Reddy District, and (2) agricultural dry land admeasuring 2 acres 3 guntas in survey No. 517, situated at Medchal, Ranga Reddy District, in E.P.No. 25 of 2003 in M.P.No. 79 of 2002.

For the Petitioner: MR.DEEPAK BHATTACHARJEE, Advocate

For the Respondent No.1: GP FOR LABOUR

For Respondents 3 to 21: Mr. I. SAI BABA, Advocate

The Court made the following ORDER :

This writ petition is filed by the petitioner, which is a nationalized bank, aggrieved by the order passed by the first respondent in E.A.No.52 of 2004 in E.P.No.25 of 2003 in M.P.No.79 of 2002, dated 06.05.2004. The unofficial respondents 3 to 21 obtained a decree against the second respondent and in execution of the said decree sought to sell the second respondent's property. With reference to the said property, the petitioner is claiming to be the mortgagee having advanced a loan to the second respondent - Company by creating a charge over the said schedule property. According to the petitioner – Bank, the unofficial respondents, who are ordinary creditors, have no precedence over the secured creditor. Therefore, the schedule property cannot be put to sale for realization of their decretal debt. The first respondent – Labour Court, after hearing both sides observed that both the petitioner-Bank and the decree holders are proceeding against the same property for the recovery of their dues by putting the property to auction, and therefore, if the sale is effected, it is in the interest of both the petitioner and the respondent decree holders. Accordingly, sale was ordered to be proceeded with. But, however, the sale proceeds are directed to be deposited before the first respondent, which shall be subject to the claim petition made by the petitioner-Bank. Aggrieved by the said order, the petitioner has come up with the present writ petition.

2. According to the learned counsel, the petitioner - Bank is a secured creditor. Therefore, the unofficial respondents 3 to 21,who are ordinary creditors, cannot take precedence over the Bank and cannot proceed against the security, which was mortgaged to the petitioner. The learned counsel also contended that if the

property is sold by the first respondent it will be a distress sale and the petitioner may not be in a position to realise the entire debt due to the petitioner from the second respondent - company, as it is the only asset of the second respondent.

3. Heard learned counsel for the petitioner and the learned counsel for respondents.

4. The first respondent - Labour Court directed only to effect the sale of the property in question and deposit the sale proceeds before it, which would be subject to the result of the adjudication of the claim petition made by the petitioner. By the said impugned order, the petitioner's claim or rights are not affected. Therefore, there is no grievance against the said order. Hence, this Court is not inclined to interfere with the impugned order of the first respondent. But, however, it is always open to the petitioner - bank to take appropriate steps to recover the debts from the secured property, which is sought to be sold by proving its claim before the first respondent, as the first respondent did not order the payment of the sale proceeds to the unofficial respondent decree holders.

5. The writ petition is accordingly disposed of with the above directions. No costs.

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S. Ananda Reddy, J

Dated: 6th July, 2004

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To

1. Labour Court-I

   Chandra Vihar, Nampally, Hyderabad.

2. Two CCs to G.P. for Labour, High Court of A.P. Buildings, Hyderabad (OUT)

3. Two CD Copies.